

STATE OF MICHIGAN
COURT OF APPEALS

In re Estate of RICHARD J. LACKS, SR.,
Deceased.

MARY PATRICIA TEETS, RICHARD J.
LACKS, JR., and KURT E. LACKS,

Petitioner-Appellee,

v

DEPARTMENT OF TREASURY,

Respondent-Appellant.

FOR PUBLICATION
March 4, 2003
9:05 a.m.

No. 225414
Kent Probate Court
LC No. 99-167543-IE

Updated Copy
May 9, 2003

Before: Wilder, P.J., and Griffin and Smolenski, JJ.

WILDER, P.J. (*dissenting*).

I respectfully dissent. I would reverse and hold that the plain language of MCL 205.232(1) requires the Richard J. Lacks, Sr. (RJL) estate to pay a Michigan estate tax, despite the estate's application of the federal estate tax credit permitted by 26 USC 2013 to eliminate its federal estate tax liability.

I

The majority noted:

Section 2011, subdivision (a) of the Internal Revenue Code (IRC) permits legal representatives of estates to deduct from the total federal estate tax obligation a limited, scheduled credit for all death taxes actually paid to any state on account of property taxable as part of the gross federal estate. *Architects of the credit clearly intended individual states to benefit from its creation, for section 2011 assures states a certain minimum of tax revenue at the expense of the federal treasury.* [*Estate of Fasken*, 19 Cal 3d 412, 417-418; 563 P2d 832 (1977) (Emphasis added; citations omitted).]

Section 32(1) of the Michigan Estate Tax Act, MCL 205.232(1), establishes the state of Michigan pick up tax contemplated by section 2011 of the IRC and provides that

[a] tax is imposed upon the transfer of the estate of every person who at the time of death was a resident of this state. The tax is equal to the maximum *allowable federal credit* under the internal revenue code *for estate, inheritance, legacy, and succession taxes paid to the states*. . . . [Emphasis added.]

This section should be read in conjunction with § 2a of the Michigan Estate Tax Act, MCL 205.202a. Subsection (1) of § 2a provides that

[i]f the total of inheritance taxes levied . . . by this act . . . does not equal or exceed the maximum credit for state death taxes *allowable* to the estate . . . against the federal estate tax imposed . . . , there is [to be] levied . . . an additional . . . tax . . . equal to the differences between the maximum credit allowed and the tax otherwise imposed by this act. [Emphasis added.]

Subsection 202a(4) explains that "[t]he purpose of [§ 2a] is to obtain the maximum benefit of the credit allowed under the provisions of the federal estate tax and it shall be liberally construed to effect this purpose."

II

We are asked to determine in this case whether MCL 205.232(1) should be interpreted to eliminate estate-tax liability under Michigan law when the federal tax credit for previous federal estate taxes paid on a prior transfer of assets (the TPT credit), as calculated under § 2013 of the IRC, has operated to extinguish any federal estate-tax liability. I agree with the majority that MCL 205.232(1) is unambiguous, but cannot join with the majority in its application of the plain language of the statute to the facts herein.

Petitioners contend that because the RJL estate applied the federal TPT credit as defined in § 2013 of the IRC to eliminate its federal estate-tax liability, its liability for Michigan estate taxes is also extinguished. The majority agrees with this contention, reasoning that because the estate did not use the federal credit allowable for taxes paid to the states (as defined in § 2011 of the IRC) but used instead the TPT credit, no Michigan estate tax is owed because the federal credit actually used by the estate (the TPT credit) was outside the scope of MCL 205.232(1).

Unlike the majority, however, I would conclude that the calculation of estate-tax liability under Michigan law is not dependent on the credit or credits actually used by the estate to diminish or extinguish its federal estate-tax liability. The Legislature's use of the term "allowable" in MCL 205.232(1) is a significant indication that irrespective of the credits actually utilized by an estate in determining the federal estate-tax liability, estate-tax liability under Michigan law is specifically and directly linked to credits *allowed* in § 2011 of the IRC. Thus, petitioners' use of the TPT credit to extinguish the RJL estate's federal estate-tax liability does not render inapplicable, for purposes of calculating estate tax liability under MCL 205.232(1), the credits *allowable* to petitioner under § 2011 of the IRC.

The fact that the TPT credit and the maximum allowable credit for state estate taxes under § 2011 of the IRC are different credits, strengthens, rather than weakens, respondent's argument that the computation of the Michigan estate tax is independent of federal deductions or credits applied by the estate in determining its federal estate-tax liability. It is precisely because

MCR 205.232(1) defines the Michigan estate tax as equal to the allowable IRC credit "for estate, inheritance, legacy, and succession taxes paid to the states" that the direct link between the Michigan estate tax and the credits "allowable" by § 2011 of the IRC is clear. MCR 205.232(1) does not refer in any manner to the credits permitted under § 2013 of the IRC or, for that matter, to the other three credits available to reduce an estate's federal estate-tax liability (§ 2012 regarding federal gift taxes, § 2014 regarding foreign death taxes, and § 2015 concerning death taxes on remainders; see discussion in *Estate of Fasken, supra* at 418 n 5). Thus, application of the TPT credit or any other federal credit to extinguish federal estate-tax liability has no effect on the calculation of estate tax liability under MCR 205.232(1).¹

I would reverse.

/s/ Kurtis T. Wilder

¹ I further disagree with the majority's view that the TPT credit is "unrelated" to the allowable federal credit for state estate taxes, because the TPT credit cannot be calculated without specific consideration of the credit for state estate taxes. See 26 USC 2013(c)(1)(A), (B) ("The [TPT] credit . . . shall not exceed the amount by which . . . the estate tax imposed by section 2001 . . . [after deducting the credits provided for in section[] . . . 2011 . . .] computed without regard to this section, exceeds . . . such tax computed by excluding from the decedent's gross estate the value of such property transferred . . .") (Emphasis added).